

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

IN THE MATTER OF:	)	UNILATERAL
	)	ADMINISTRATIVE ORDER
	)	FOR REMOVAL, ACCESS AND
	)	NONINTERFERENCE
<b>MCCORMICK &amp; BAXTER</b>	)	
<b>SUPERFUND SITE</b>	)	CERCLA Docket No.
Stockton, California	)	2006-19
	)	
DAVID PARKER, and	)	
DAVID PARKER d.b.a. PARKER OCEANIC	)	Proceeding Under Section
	)	106(a) of the Comprehensive
<b>RESPONDENT</b>	)	Environmental Response,
	)	Compensation and Liability Act,
	)	42 U.S.C. §§ 9604 and 9606(a)
	)	

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**I. JURISDICTION AND GENERAL PROVISIONS**

1. This Order is issued under the authority vested in the President of the United States by Sections 104 and 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA" or "Superfund"), 42 U.S.C. §106(a), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegations 14-14-A and 14-14-B, and to the Superfund Branch Chiefs, Superfund Division, EPA Region 9, by EPA Delegations R9 1290-13 and R9 1290-14A.

2. This Order pertains to the Old Mormon Slough ("Slough"), located in Stockton, San Joaquin County, California. EPA has determined that contamination in the portion of the Slough that is part of the McCormick & Baxter Superfund Site ("Site") presents an imminent and substantial endangerment to the environment and public health. EPA has selected a remedy for this endangerment in a Record of Decision dated March 31, 1999 ("ROD"). Pursuant to Sections 104 and 106(a) of CERCLA, 42 U.S.C. § 9604 and 9606(a), EPA intends to implement the selected remedial response action that addresses the Slough portion of the site, and in particular the contaminated sediment at the bottom of the Slough, beginning on July 1, 2006. This remedial action is required to protect public health and welfare and the environment. For EPA to implement the Slough portion of the remedy, the area of the Slough to be capped ("Capping Area," see Attachment A) must be permanently free of all vessels and structures, and a channel area of the Slough leading to the Capping Area ("Access Area") must be free of all vessels and structures during the period of cap construction. In order to implement the remedial action in the Slough, this Order requires David Parker and David Parker d.b.a. Parker Oceanic (collectively

"Parker" or "Respondent") to remove any and all vessels/boats owned by or otherwise under the control of Respondent (collectively "Vessels") that are located in the portions of the Slough depicted in Attachment A (showing "Capping Area" and "Access Area," hereinafter collectively "Access Areas") by June 16, 2006 and to locate them elsewhere, so that EPA can conduct the Slough portion of the remedy. In the alternative, this Order requires Respondent to notify EPA, by Monday June 12, 2006, that Respondent will be unable to remove all Vessels by Friday, June 16, 2006. In that event, the Order requires Respondent not to interfere with EPA removing the Vessels. This Order also requires Respondent to refrain from certain described actions, including, but not limited to refraining from interference with EPA's removal and remedial actions. Finally, this Order requires Respondent to provide EPA and its contractors with access to the Vessels as needed for the purposes of removal from the Access Areas, safe handling, storage and, if needed, demolition of the Vessels.

3. The EPA has notified the State of California of this action, in accordance with Sections 104 and 106(a) of CERCLA, 42 U.S.C. § 9604 and § 9606(a).

## **II. PARTIES BOUND**

4. This Order applies to and binds Parker and his tenants, heirs, officers, employees, and agents. Any sale or other change in ownership of the Vessel(s) in question will in no way alter Respondent's responsibilities under this Order.

5. Respondent shall ensure that his tenants, heirs, officers, employees, agents and/or representatives receive a copy of this Order. Respondent shall be responsible for any noncompliance with this Order.

## **III. FINDINGS OF FACT**

6. The Site is an approximately 32-acre area located in Stockton, California. The Site is bordered by Washington Street to the south, the I-5 freeway to the east, and an industrial facility to the west. The Slough, which is north of the property owned by the McCormick & Baxter Creosoting Company ("M&B"), connects to the Stockton Deepwater Channel on the San Joaquin River. M&B operated a wood treating company from 1946 to 1991 at the Site. M&B ceased operations in 1991. Various wood preservation processes were used at the Site during its operational history. Chemical preservatives used at the Site contained creosote, pentachlorophenol ("PCP"), arsenic, chromium, copper and zinc. Solvents used were petroleum-based fuels such as fuel oil, kerosene, diesel, butane and ether. Both polynuclear aromatic hydrocarbons ("PAHs") and dioxin are found at the Site, including in the Slough. The PAHs are carcinogenic and non-carcinogenic compounds found in creosote. Dioxin is present as a contaminant in the industrial-grade PCP used for wood-treating. Arsenic, copper, chromium and zinc are also found in the Slough.

7. In 1978, the California Regional Water Quality Control Board ("RWQCB") responded to a fish kill at the New Mormon Slough and the Stockton Deepwater Channel. New Mormon Slough is located on the other side of the freeway from the Slough. The fish kill was traced to M&B. The RWQCB issued a Cleanup and Abatement Order to M&B dated January 27,

1978. Pursuant to that order, M&B installed a stormwater collection system and perimeter levees to prevent further stormwater discharges from the Site. Stormwater is collected in two stormwater holding ponds in the southwestern portion of the Site. In 1984, M&B entered into an agreement with the California Department of Health Services ("DHS") and RWQCB to investigate and clean up contamination at the Site. M&B installed a series of groundwater monitoring wells and conducted soil and groundwater sampling under DHS oversight. In 1981, M&B closed the oily waste ponds located in the northwestern corner of the Site along the Slough. M&B removed approximately 144 tons of contaminated soil from the larger pond area and backfilled this area with clean fill.

8. On February 6, 1992, EPA proposed to add the Site to the Superfund National Priorities List ("NPL"), 40 CFR Part 300, Appendix B. The NPL is the list, compiled by EPA pursuant to CERCLA Section 105, 42 U.S.C. § 9605, of uncontrolled hazardous substance releases in the United States that are priorities for long-term remedial evaluation and response. The Site was listed on the NPL on October 14, 1992.

9. The first EPA removal action started on July 8, 1992. Removal actions are generally the early response actions taken by the Superfund program to address the most immediate and highest risk first. EPA carried out several phases of removal actions to dispose of chemicals and sludges remaining at the Site, to demolish above-ground tanks and buildings, and to improve Site security. In 1996, EPA installed a sheet piling wall along the southern shoreline of the Slough to control seeps from the oily waste pond area into the Slough. In July 1997, EPA excavated approximately 12,000 cubic yards of contaminated soil from behind the sheet piling wall. The excavated soil was moved to existing concrete sumps and to a newly-constructed lined repository in the central portion of the Site. The oily waste pond area was backfilled with clean imported fill. The central area of the Site was covered over with clean imported fill and an asphalt cap. All wood treatment process units and tanks that were associated with historical operations at the Site have been emptied of chemicals, cleaned and removed from the Site. In addition, most of the above-ground structures at the Site were demolished.

10. The Remedial Investigation ("RI") report concluded that past wood treating operations at the Site resulted in the contamination of soil, groundwater, and the Slough sediments. Areas identified as the probable sources of the contamination presently found at the Site include the main processing area, the oily waste ponds, and the treated wood storage areas.

11. The Feasibility Study ("FS") evaluated the different alternatives for cleanup options at the Site.

12. The Site is divided into two operable units: (1) the upland soils and groundwater operable unit and (2) the surface water and sediment in the Slough operable unit

13. The Record of Decision ("ROD") for the Site was finalized on March 31, 1999. The ROD presents the final remedies for vadose zone soils and sediments, and an interim remedy for groundwater. The selected remedy for the sediment is the placement of a two-foot thick sand cap to isolate contaminated sediment in the Slough. In the ROD, EPA concluded that it was impracticable to excavate, treat, and/or dispose of all contaminated sediment at the Site.

14. The Slough is approximately 760 meters (2500 feet) long and 55 meters (180 feet) wide. The majority of the Slough is approximately 3 meters (10 feet) deep.

15. Although warning signs are posted in the area and the county has conducted outreach programs to warn residents of the dangers of eating locally-caught fish, subsistence fishermen are known to currently fish in the Slough. Sediment in the Slough is contaminated with dioxin, PAHs and metals. Creosote is a complex mixture of over 200 compounds, which are primarily PAHs. Creosote is a potent toxicant causing both acute and chronic effects in humans. Creosote is also a carcinogen. PAH benzo(a)pyrene ("BAP"), which is found at the Site, is classified as a known or likely human carcinogen. Dioxin is also found at the Site. Oral exposure to dioxin causes increased incidence of tumors in the liver, tongue, hard palate and lungs in rats, and in thyroid and adrenal glands in mice. Dioxin is classified as a known or likely human carcinogen. Adverse reproductive effects are caused in a variety of animals. The major observed toxic effect on humans is chloracne. Human exposure through herbicides and other tetrachlorodibenzo-p-dioxin (TCDD)-contaminated chemicals can also cause altered liver function, porphyria, neurotoxicity, and hyper pigmentation. Toxic effects to acutely exposed animals include extreme weight loss, liver and thymus damage, immunotoxicity, and hepatotoxicity.

16. Site-specific studies concluded that some risk to ecological risk receptor species can be attributed to the presence of PAHs and dioxin in surface sediments. PAHs posed a risk to all assessment endpoints, but threshold limits for PAHs were violated principally for fish and benthic fauna. Dioxin was estimated to be a potential risk to fish and bird reproduction and health.

17. The sediment remedy was divided into two phases. Because of concerns about the impact on species protected by the Endangered Species Act, it is necessary for the remediation to take place from July to December. In-water construction is limited to a five-month period each year when endangered species are not migrating in the area of the Site. Phase I, performed from October to December 2002, consisted of the following activities: removal of old pilings in the Slough; collection of water quality samples; installation of a temporary silt curtain; removal of rip-rap; cutting back the southern shoreline; installation of new rip-rap system and berm; and removal of the temporary silt curtain. Phase II was scheduled to take place from July 1, 2003, to December 31, 2003; however, EPA has been unable to perform the remedy due to the presence of vessels, including those owned by parties other than Respondents. Major Phase II activities will include: mobilization of barges that will bring in cap material from Rio Vista to the Slough; installation of temporary silt curtain(s); clearing of debris on slough bottom; collection of water quality samples; placement of sediment cap; bathymetric surveying of slough bottom; placement of permanent pilings; removal of temporary silt curtain(s) and placement of permanent log boom. The log boom will prevent all vessels from entering the Capping Area of the Slough.

18. Vessels in which Respondents have some ownership and/or control are docked at property owned at CRV's facility on the North side of the Slough ("CRV's Facility"). EPA has been in contact with CRV and informed CRV in February 2006 that all vessels docked at its facility must be removed from the Access Areas of the Slough by July 1, 2006. EPA first learned

from a letter dated May 15, 2006 from the attorney for CRV and Ryan Voorhees, an owner of CRV. CRV had previously told EPA that CRV and/or Mr. Voorhees owned the vessels docked at the CRV facility. EPA's project manager, Marie Lacey, telephoned Parker on May 16, 2006 to determine whether he could move the Vessels in time to allow EPA to proceed with its long-planned remedial action. Respondent indicated in this initial telephone call with Ms. Lacey that he might not have the resources to perform this work and confirmed this in an email dated May 17. See correspondence provided as Attachment B.

19. By letter dated May 18, 2006, EPA contacted Respondent and notified Respondent of his duty to remove his Vessel(s) from the affected portion of the Slough before July 1, 2006. See Attachment B.

20. Respondent has subsequently confirmed orally and by email that he does not currently have funding to remove the Vessels from the Slough in time for EPA to move forward with its plan to perform remediation response actions beginning on July 1, 2006.

21. EPA has knowledge that one of Respondent's Vessels, the Holland, sank in early April 2006 causing an oil spill of approximately 1,000 gallons that spread over approximately a one-mile section of the waterway. The Coast Guard responded to the spill. EPA further understands that this vessel remains unrepaired at this time.

22. In order to complete the remedial action to address the imminent and substantial endangerment to human health as called for by the ROD, EPA necessarily must take all steps to ensure that the Access Areas of the Slough are free of any barges or vessels so that EPA can perform Phase II of the sediment remedy. Once the remedy is implemented, the Capping Area of the Slough must be free of any barges or vessels that could damage the sediment cap.

23. EPA has informed Respondent that his Vessels will be permanently banned from the Capping Area of the Slough after the implementation of the remedy.

24. The presence of Vessels in the Access Areas would prevent timely implementation of the remedy in the Slough.

25. Therefore, EPA hereby requires Respondent to either remove the Vessel(s) from the Access Areas of the Slough by June 16, 2006 or refrain from interfering with EPA's efforts to remove them after that date.

#### **IV. CONCLUSIONS OF LAW AND DETERMINATIONS**

Based on the Findings of Fact set forth above and based on the Administrative Record for this response action, EPA has determined that:

26. The Site, including without limitation, the Old Mormon Slough, is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

27. PAHs and dioxin are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed as such at 40 CFR § 302.4,

and, as described above in Section III (FINDINGS OF FACT) of this Order, there has been, within the meaning of Section 101(22), 42 U.S.C. § 9601(22), a release of these hazardous substances at or from the Site, including without limitation, the Slough.

28. Respondent David Parker d.b.a. Parker Oceanic is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

29. There have been releases or threatened releases of hazardous substances into the environment at and from the Site within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22) and 9607(a).

30. EPA has authority to issue this Order requiring Respondent to remove all Vessels from the Access Areas of the Slough, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

31. EPA has authority to issue this Order requiring Respondent to provide access and noninterference with respect to EPA inspections, investigations and response actions, including removal of all Vessels from the Access Areas of the Slough, pursuant to Sections 104 and 106(a) of CERCLA, 42 U.S.C. §§ 9604 and 9606(a).

32. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. 9601(22).

33. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Sections 104 and 106(a) of CERCLA, 42 U.S.C. §§ 9604 and 9606(a).

34. Under Section 104(a) of CERCLA, 42 U.S.C. § 9604, "[the] President is authorized to act . . . to remove or arrange for removal of, and provide for remedial action relating to such hazardous substance, pollutant or contaminant at any time. . . . When the President determines that such action will be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party, the President may allow such person to carry out the action.

35. Under Sections 104(e)(5)(A) and 106(a) of CERCLA, 42 U.S.C. §§ 9604(e)(5)(A) and 9606(a), the President may issue compliance orders requiring removal, access and noninterference with inspections and selected removal actions.

36. Under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), "[the] President may . . . after notice to the affected State, take action including . . . issuing such orders as may be necessary to protect public health and welfare and the environment."

37. The actions required and forbidden by this Order are necessary to protect the public health, welfare, and the environment, and are not inconsistent with the NCP, 40 C.F.R. Part 300, and CERCLA.

## **V. ORDER**

38. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this response action, EPA orders Respondent to act or refrain from acting as follows:

(a) Respondent shall remove all Vessels under his ownership or control from the Access Areas of the Slough by June 16, 2006, or

(b) If Respondent is unable insure that all Vessels will be removed from the Access Areas of the Slough by June 16, 2006, Respondent shall notify EPA by June 12, 2006 if he is unable to insure removal of all Vessels by June 16, 2006.

(c) In the event that Respondent is unable to insure removal by June 16, 2006, EPA will exercise its legal authorities to remove all Vessels from the Access Area of the Slough and Respondent is hereby ordered to provide access and not to interfere with EPA's response actions, including all removal and remedial actions, in this or any other respect.

39. Respondent shall not interfere with EPA and its representatives or contractors as they perform actions that EPA determines are necessary to complete the actions described in the ROD, any Action Memorandum and/or this Order. This noninterference shall include, but not be limited to, permanently keeping the Capping Area of the Slough free of barges or other vessels owned or controlled by Respondent.

40. This Order shall be effective the date the Order is signed by the Site Cleanup Branch Chief of the Superfund Division. Respondent shall provide written notice to EPA, not later than 5:00 P.M. Pacific Time, on June 12, 2006 indicating whether he will comply with this Order (Written notice may be sent by FAX to EPA Attorney Janet Magnuson at (415) 947-3570 or by email to: [magnuson.janet@epa.gov](mailto:magnuson.janet@epa.gov)). If Respondent does not unequivocally state that he will comply with this Order, Respondent shall be in violation of this Order, and Respondent shall have failed or refused to comply with this Order. Further, Respondent's failure to comply with this Order, or any action taken by Respondent to deny EPA access to Respondent's Vessels and the Slough for the purpose of conducting a response action, or any attempt to interfere with the actions described in the ROD or this Order shall be a violation of this Order.

## **VI. NOTIFICATION OF RELEASES**

41. If any incident, or change in site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately notify the EPA Remedial Project Manager ("RPM") of the incident or site

conditions. EPA may respond to the release or endangerment and reserves the right to pursue cost recovery.

## **VII. AUTHORITY OF THE EPA REMEDIAL PROJECT MANAGER**

42. EPA's designated RPM, Marie Lacey, is responsible for overseeing the proper and complete implementation of this Order. The RPM individually has the authority granted by the NCP, 40 C.F.R. § 300.120, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other response action undertaken at the Site. The EPA may change its designated RPM from time to time, and will provide Respondent with written notice of such changes.

## **VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE**

43. Violation of any provision of this Order may subject Respondent to civil penalties of up to thirty-two thousand five hundred dollars (\$32,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

## **VIX. RESERVATION OF RIGHTS**

44. Nothing herein limits the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein prevents EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. The EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondent.

## **X. OTHER CLAIMS**

45. In issuing this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent or his employees, agents, representatives, successors, officers, assigns, contractors or consultants in carrying out any action or activity pursuant to this Order. Neither the United States nor EPA may be deemed a party to any contract entered into by Respondent or his employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

46. This Order is not a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).



47. Nothing in this Order is a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including any claims of the United States for costs, damages and interest under Sections 104(e), 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

48. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA Section 106(a), 42 U.S.C. 9606(a), et seq., or any other applicable law.

49. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations.

50. This Order is without prejudice to any claim that Respondent may or may not have to compensation under any provision of law.

## **XI. MODIFICATIONS**

51. The Order may only be modified in writing by signature of the Site Cleanup Branch Chief or the Director or Deputy Director, Superfund Division, EPA Region 9.

## **XII. ACCESS TO ADMINISTRATIVE RECORD**

52. The Administrative Record supporting these response actions will be made available for review at EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, and at the Stockton Public Library, Stockton, California.

## **XIII. OPPORTUNITY TO CONFER**

53. Respondent may request a conference with EPA's attorney and RPM to discuss this Order by June 12, 2006. If requested, the conference shall occur as soon as practicable for all parties at 75 Hawthorne Street, San Francisco, CA. Alternatively, EPA is willing to have this conference, if requested by Respondent, in the Stockton area at a mutually agreeable location. Requests for a conference shall be made by telephone to EPA Attorney Janet Magnuson at (415) 972-3887 and confirmed in writing by FAX to (415) 947-3570 or by email to [magnuson.janet@epa.gov](mailto:magnuson.janet@epa.gov). Respondent may be represented by an attorney or other representative at the conference.

54. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondent intends to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made.

#### XIV. SEVERABILITY

55. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent will remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

#### XV. EFFECTIVE DATE AND DURATION

56. This Order shall be effective on the date the Order is signed by the Chief of the Site Cleanup Branch, Superfund Division. It will remain effective until formally withdrawn by EPA in writing.

IT IS SO ORDERED.

BY: Elizabeth J. Adams DATE: June 9, 2006  
Elizabeth J. Adams,  
Chief, Site Cleanup Branch  
Superfund Division  
U.S. Environmental Protection Agency  
Region 9

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order for Removal, Access and Noninterference to David Parker and David Parker d.b.a. Parker Oceanic, CERCLA Docket No. 2006-19, has been served upon Respondent by three methods Hand Delivery to the address shown below, by email to dp@parkeroceanic.com and by hand delivery to David Parker at the CRV Enterprises, Inc. property located at 1404 West Weber Street, Stockton, CA 95203.

David Parker and/or  
Parker Ocean  
1542 Weber Street  
Stockton, CA 95203

Executed this 9<sup>th</sup> day of June, 2006 at Stockton, California.

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Marie Lacey,  
Remedial Project Manager,  
US EPA Region 9